KEITH LAUDERBAUGH

IBLA 96-26 Decided February 5, 1998

Appeal from a Decision by the New Mexico State Office, Bureau of Land Management, declaring mining claims abandoned and void. NMMC 162515 through NMMC 162519.

Reversed and remanded.

1. Mining Claims: Recordation of Certificate or Notice of Location--Mining Claims: Relocation--Mining Claims: Rental or Claim Maintenance Fees: Generally

A finding that mining claims were voided by a failure to comply with mining claim maintenance fee filing requirements is reversed and remanded for further review when the miner offers evidence tending to show his voided locations related back to prior claims for which compliance with claim maintenance requirements was deferred under provision of 43 C.F.R. § 3833.1-6(e)(1) (1994).

APPEARANCES: Keith Lauderbaugh, Albuquerque, New Mexico, pro se.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Keith Lauderbaugh has appealed from a July 24, 1995, Decision of the New Mexico State Office, Bureau of Land Management (BLM), finding mining claims NMMC 162515 through NMMC 162519 abandoned and void. The Decision found that Lauderbaugh failed to either pay maintenance fees in the amount of $100 per claim per year, or to submit a maintenance fee waiver certification (an application for a small miner exemption) and file supporting assessment work notices on or before August 31, 1994, in accordance with Departmental regulations found at 43 C.F.R. § 3833, implementing the Omnibus Budget Reconciliation Act of August 10, 1993, 30 U.S.C. §§ 28(f) through (i) (1994).

Lauderbaugh's appeal from BLM's Decision was timely. The record shows he filed location notices for claims he named Emperial Lode #2 Mine (NMMC 162515) and The Rough Rider Mine, The Rough Rider #2 Mine, Rough Rider #3 Mine, and Rough Rider #4 Mine (NMMC 162516 through NMMC 162519)

on August 15, 1994. Included with his filing was a $100 location fee and a $5 service fee for each claim. The case file contains no record that he paid maintenance fees or claimed a small miner exemption from such payment.

In his Statement of Reasons on appeal (SOR), Lauderbaugh asserts that these claims are "relocations" of claims located in 1984 and numbered NMMC 133874 through NMMC 133877 (named The Rough Rider 1 through 4), for which he was granted a deferment from annual assessment work pursuant to 43 C.F.R. § 3833.1-6(e)(1) (1994). Two BLM Decisions dated July 1, 1994, and October 13, 1995, grant deferment from annual assessment work beginning on September 1, 1994, and continuing until August 31, 1996. An effect of such grants is that "maintenance fees are deferred for the upcoming assessment year." 43 C.F.R. § 3833.1-6(e)(1) (1994). Lauderbaugh claims that since the 1984 and 1994 claims are the same, the deferment granted to the 1984 locations should apply to the 1994 claims as well, and that BLM improperly declared the claims abandoned and void for failure to pay claim maintenance fees.

The records kept by BLM for both sets of claims reveal that, on May 9, 1994, Lauderbaugh filed a petition for deferment of annual assessment work on the 1984 claims. On July 1, 1994, BLM issued a temporary deferment from performance of annual assessment work for "a period of 1 year beginning September 1, 1994, and ending on August 31, 1995." The case file does not show when Lauderbaugh received this notice, but he states he received the deferment decision after filing the 1994 location notices that changed the original claim boundaries. The record further shows that on August 30, 1995, he requested an extension that was granted for the 1984 claims for "a period of 1 year from September 1, 1995 and ending on August 31, 1996." (Decision dated Oct. 13, 1994, at 1.)

On August 15, 1994, Lauderbaugh filed location notices with BLM of a July 1, 1994, "relocation" of his 1984 claims. The BLM did not file these documents in the case file kept for NMMC 133874 through NMMC 133877, but assigned the claims new serial numbers, NMMC 162515 through NMMC 162519. Location notices for NMMC 162515 through NMMC 162519 recite the locations are relocations of claims located on November 14, 1984, as the Rough Rider unpatented claims. Location notices and plat maps for both the 1984 and 1994 claims show them to be located in the SE¼NE¼ of sec. 33, and SW¼NW¼ of sec. 34, T. 10 S., R. 19 N., New Mexico Principal Meridian. Claims NMMC 162515 and NMMC 133874 share the same western boundary adjacent to the east boundary of Emperial Lode 1201, a patented mining claim. Beginning with this common boundary, each set of claims runs contiguously from west to east, with NMMC 162515 through NMMC 162519 generally overlapping NMMC 133874 through NMMC 133877, although not without boundary modifications.

The location notices and maps reveal that Lauderbaugh has created five claims on lands previously occupied by four, but not without adding new lands, primarily along the easternmost boundary of NMMC 133874. While the Emperial Lode #2 Mine (NMMC 162515) is a narrow claim that partially overlaps the 1984 Rough Rider #2, suggesting that no new lands have been added

to the claims, a comparison of the 1984 and 1994 claims reveals that, along the northern boundary, total west-to-east footage of the later-filed claims has been expanded over that claimed earlier by 425 feet. Along the southern boundary, the later-filed claims expand the total west-to-east footage of the earlier-filed claims by 825 feet.

[1] Because Lauderbaugh labeled his 1994 claims "relocations," rather than "amendments," BLM took the labels at face value, created new files for the claims, and assigned them new serial numbers. This is not a first-time occurrence. In a parallel case reported as Edward E. Ellis, 101 IBLA 272 (1988), we found that when:

> a specifically identified mining claim has been recorded twice with BLM by the same locators, the second time as a relocation, a finding that the claim as relocated is abandoned and void for failure to file evidence of assessment work, on the ground the proof of labor filed with BLM referred only to the serial number assigned to the earlier recordation, will be reversed in the absence of evidence the relocation was adverse to the earlier location rather than an amended location which relates back.

If, therefore, Lauderbaugh's 1994 location notices amended his 1984 claims for which deferments were granted, BLM should merge the files and apply the deferments to the amended claims.

Departmental regulation 43 C.F.R. § 3833.0-5(p) defines an amended location to mean "a location that is in furtherance of an earlier valid location and that may or may not take in different or additional unappropriated ground." While several prior decisions by this Board indicate a purported amendment that includes new land cannot stand as an amended location, see, e.g., Patsy Brings, 119 IBLA 319, 325 (1991), and cases cited therein, those cases arose when additional lands claimed by amendment were segregated or withdrawn from mineral entry prior to the purported amendment. Nonetheless, 43 C.F.R. § 3833.0-5(p) (1994) provides that amended locations "may * * * take in different or additional unappropriated ground." (Emphasis supplied.) See also R. Gail Tibbetts, 43 IBLA 210, 216-17 (1979), wherein the Board defined "an 'amended' location as [one] made in furtherance of an earlier valid location which may or may not take in different or additional ground." (Emphasis supplied.) In Tibbetts also, the determining factor was whether adverse rights attached to the additional lands between the original and amended locations. Id. at 217.

Lauderbaugh's SOR and the timing of actions by BLM and Lauderbaugh indicate that Lauderbaugh intended to amend the 1984 claims in 1994. What is not clear from the record is whether Lauderbaugh has added appropriated lands (lands to which rights adverse to his own attached prior to the attempted amendments), to his earlier claims, making them in fact "relocations," rather than amendments. See 43 C.F.R. § 3833.0-5(p).

In Estate of Van Dolah, 95 IBLA 132 (1987), the Board remanded for further review a BLM decision declaring a mining claim null and void, based

on a showing that the claim was an amended location, rather than a relocation. In this case, because BLM has not ruled whether the amended claims include additional unappropriated lands, we remand the case files in order that BLM may determine, in the first instance, whether the additional lands claimed in 1994 will cause Lauderbaugh's attempt to amend the locations to fail. In determining whether the claims were in fact amended, the original location notices and the amended notices must be construed together, and if sufficient when so construed, the locations will be valid. See Estate of Van Dolah, supra.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is reversed and remanded for action consistent with this opinion.

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Franklin D. Arness
Administrative Judge

I concur:

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David L. Hughes
Administrative Judge